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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/963,759

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Philip R. Andersen

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EXAMINER

BROWN, TIMOTHY M

ART UNIT

PAPER NUMBER

1648

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/963,759

Applicant(s)

ANDERSEN ET AL.

Examiner

Timothy M. Brown

Art Unit

1648

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-19, 22 and 23 is/are pending in the application.
4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 14, 17-19, 22 and 23 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 29 October 2004.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This Non-Final Office Action is responsive to the communication mailed February 7, 2005. The status of the claims is as follows:

Claims 14-19, 22 and 23 are pending.

Claims 15 and 16 have been withdrawn.

Claims 1-13, 15, 16, 20 and 21 have been canceled.

Terminal Disclaimer

The terminal disclaimer filed on February 7, 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,383,975 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Specification

The specification is objected to because it does not comply with 37 C.F.R. 1.78 which requires the specification to refer to any prior application from which priority is claimed. In this case, the specification fails to refer to the following applications by serial number and filing date: 07/447,810; 08/120,311; 08/306,539; and 08/852,143.

Claim Objections

Claim 22 is objected to for improperly depending from canceled claims 20 and 21.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 14, 17-19, 22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 14 and 19 are indefinite for reciting “an isolated Feline Immunodeficiency Virus (FIV) envelope polypeptide that cross-reacts with the envelope protein gp130, in the presence of a gp-130-specific monoclonal antibody” This language is indefinite because it is unclear how the isolated FIV envelope polypeptide can “cross-react” with another polypeptide (i.e. the envelope protein gp130). Based on the prior claim language, and for purposes of examination, it is assumed Applicants intended to claim an isolated FIV polypeptide that cross-reacts with an antibody that binds gp130. If this interpretation was intended, this rejection may be overcome by the following amendment: “providing an isolated Feline Immunodeficiency Virus (FIV) envelope polypeptide, wherein the isolated polypeptide cross-reacts with an antibody that binds the FIV envelope polypeptide gp130.”

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14, 17-19, 22 and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

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Applicants claim a method and device for detecting FIV antibody in a sample comprising contacting a sample with an isolated FIV envelope polypeptide, and detecting a reaction between the polypeptide and the sample, wherein the isolated FIV envelope polypeptide is a peptide that cross-reacts with anti-FIV gp130 antibody. Accordingly, *the isolated FIV envelope polypeptide can be any non-gp130 FIV polypeptide that reacts with gp-130 antibody*. The specification does not support such a polypeptide.

The specification discloses a number of gag and env polypeptides including p10, p15, p26, gp40, gp100 and gp130. The specification also shows that FIV p26 monoclonal antibody was able to cross-react with p47, p36, p22 and p15 (p. 11). The specification does not however disclose any cross-reactivity experiments involving gp130 antibody. Rather, the specification only shows that gp130 antibody may be isolated using radioimmunoprecipitation assay. There is no indication that this antibody is capable of cross-reacting with any other peptide, let alone another FIV envelope polypeptide. Accordingly, one skilled in the art could not reasonably conclude the inventors were in possession of a FIV envelope polypeptide that is capable of reacting with gp130 antibody as claimed.

Response to Arguments

All outstanding rejections under 35 U.S.C. section 112 have been withdrawn in view of Applicants' amendment. The rejection of the claims under the doctrine of non-obviousness type double patenting has been withdrawn in view of Applicants' terminal disclaimer discussed above.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Brown whose telephone number is (571) 272-0773. The examiner can normally be reached on Monday - Friday, 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (571) 272-0902. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tmb


JAMES HOUSEL 10/31/05
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Timothy M. Brown
Examiner
Art Unit 1648

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10/30/05